

CLERK'S OFFICE
COURT OF APPEAL SECOND DIST.
FILED

Case No. B227414

2011 SEP -2 PM 4:28

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION 4

JOSEPH A. LANE CLERK

OMAR RODRIGUEZ, STEVE KARAGIOSIAN
AND CINDY GUILLEN-GOMEZ,
Plaintiffs and Appellants,

v.

BURBANK POLICE DEPARTMENT ET AL.,
Defendants and Respondents.

Appeal from Superior Court of Los Angeles County, Department 37
The Honorable Joanne O'Donnell, Telephone: (213) 974-5649
LASC Case No. BC 414602

RESPONDENT'S APPENDIX IN LIEU OF CLERK'S TRANSCRIPT

MITCHELL SILBERBERG & KNUPP LLP
Lawrence A. Michaels (State Bar No. 107260), lam@msk.com
Veronica T. von Grabow (State Bar No. 259859), vtv@msk.com
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500 North Brand Boulevard, Twentieth Floor
Glendale, California 91203-9946
Telephone: (818) 508-3700
Facsimile: (818) 506-4827

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COURT OF APPEAL - SECOND DISTRICT

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Case No. B227414

JOSEPH A. LANE

Clerk

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SECOND APPELLATE DISTRICT
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AND CINDY GUILLEN-GOMEZ,
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Case No. B227414

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SECOND APPELLATE DISTRICT
DIVISION 4

OMAR RODRIGUEZ, STEVE KARAGIOSIAN
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CLERK'S OFFICE
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DIVISION 4
2011 SEP -2 PM 4:28
JOSEPH A. LAINE CLERK

CITY ATTORNEY'S OFFICE – CITY OF BURBANK
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275 East Olive Avenue
Burbank, California 91510
Telephone: (818) 238-5707
Facsimile: (818) 238-5724

Attorneys for Defendants and Respondents
CITY OF BURBANK, including the
POLICE DEPARTMENT OF THE CITY OF BURBANK
(erroneously sued as an independent entity named
“BURBANK POLICE DEPARTMENT”)

ALPHABETICAL INDEX

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Supplemental Declaration of Lawrence A. Michaels in Support of Defendant Burbank's Opposition To Motion to Disqualify All Defense Counsel	09/29/2010	2	7

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 10/02/09

DEPT. 37

HONORABLE JOANNE O'DONNELL

JUDGE

H. A. SMITH

DEPUTY CLERK

HONORABLE
6.

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

N. AVALOS, C.A.

Deputy Sheriff

C. KWON-CHANG

Reporter

9:00 am

BC414602

Plaintiff
Counsel

Solomon E. Gresen ✓
RHEUBAN & GRESEN

OMAR RODRIGUEZ ET AL

VS

Defendant
Counsel

Lawrence A. Michaels ✓
MITCHELL SILBERBERG ET AL

170.6 DAVID P. YAFFE

R/F 7-27-09 Denied as to BC4179

Linda Miller Savitt ✓
BALLARD ROSENBERG ET AL

NATURE OF PROCEEDINGS:

DEMURRER OF DEFENDANTS KERRY SCHILF ET AL TO
COMPLAINT;

MOTION OF DEFENDANTS BURBANK POLICE DEPARTMENT AND
CITY OF BURBANK FOR AN ORDER: (1) COMPELLING
DEPOSITION TESTIMONY OF PLAINTIFFS ELFEGO RODRIGUEZ
AND OMAR RODRIGUEZ; (2) APPOINTING A DISCOVERY
REFEREE TO HEAR OTHER ISSUES REGARDING DEPOSITIONS
IN THIS ACTION; AND (3) GRANTING REQUEST FOR
MONETARY SANCTIONS IN THE AMOUNT OF \$4,260 AGAINST
PLAINTIFFS AND THEIR ATTORNEYS OF RECORD;

The demurrer was previously taken off calendar
pursuant to request of the moving party.

Matter is called for hearing. Counsel have reviewed
the court's written tentative ruling and advise the
court that they have met and conferred regarding the
appointment of a discovery referee. Counsel have
agreed on Retired Judge Diane Wayne as the referee
as well as alternates in the event Judge Wayne is
unavailable.

The court hears argument of counsel. The tentative
ruling issues as the order of the court:

The court takes judicial notice of plaintiffs'
motion for protective order, including its
attachments, but not of the truth of the matters
stated therein.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 10/02/09

DEPT. 37

HONORABLE JOANNE O'DONNELL

JUDGE

H. A. SMITH

DEPUTY CLERK

HONORABLE
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JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

N. AVALOS, C.A.

Deputy Sheriff

C. KWON-CHANG

Reporter

9:00 am BC414602

Plaintiff
Counsel

Solomon E. Gresen ✓
RHEUBAN & GRESEN

OMAR RODRIGUEZ ET AL

VS

Defendant
Counsel

Lawrence A. Michaels ✓
MITCHELL SILBERBERG ET AL

170.6 DAVID P. YAFFE

R/F 7-27-09 Denied as to BC4179

Linda Miller Savitt ✓
BALLARD ROSENBERG ET AL

NATURE OF PROCEEDINGS:

The motion to compel the continued deposition of plaintiff Elfego Rodriguez is granted. Counsel are ordered to meet and confer in the jury room before leaving Dept. 37 today to agree on the date, time and place of the continued deposition. The motion to compel plaintiff Omar Rodriguez to answer certain deposition questions is denied. The motion for appointment of a discovery referee is granted. The parties are to share the cost of the referee equally. CCP §639(d)(6)(A). Counsel are ordered to meet and confer in the jury room before leaving Dept. 37 today to reach agreement, if possible, on a discovery referee. If the parties are unable to agree, each party is ordered to submit to the court before leaving Dept. 37 a list of up to three nominees for appointment as referee. CCP §640. No sanctions.

Elfego Rodriguez deposition. A protective order "may include, but is not limited to, one or more of the following directions: . . . (12) that designated persons, other than the parties to the action and their officers and counsel, be excluded from attending the deposition." CCP § 2025.420. The court is not inclined to exclude defendants' representatives from the depositions at this time. Lowy Development Corporation v. Superior Court (1987) 190 Cal.App.3d 317, where limitations were imposed to prevent possible collusion, does not apply here because plaintiffs' counsel indicated

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 10/02/09

DEPT. 37

HONORABLE JOANNE O'DONNELL

JUDGE

H. A. SMITH

DEPUTY CLERK

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JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

N. AVALOS, C.A.

Deputy Sheriff

C. KWON-CHANG

Reporter

9:00 am

BC414602

Plaintiff

Solomon E. Gresen ✓

Counsel

RHEUBAN & GRESEN

OMAR RODRIGUEZ ET AL

VS

Defendant

Lawrence A. Michaels ✓

BURBANK POLICE DEPARTMENT ET AL

Counsel

MITCHELL SILBERBERG ET AL

170.6 DAVID P. YAFFE

Linda Miller Savitt ✓

R/F 7-27-09 Denied as to BC4179

BALLARD ROSENBERG ET AL

NATURE OF PROCEEDINGS:

that he did not wish to prevent the representatives from observing the testimony by stating that they could watch plaintiffs' testimony on videotape. Plaintiffs' claims of collusion and intimidation of witnesses are speculative in any event. If the police officers were still parties to the action, they would be permitted to attend plaintiffs' depositions, regardless of whether plaintiffs might feel intimidated by their presence. To the extent that the police officers are attending the depositions in the capacity of a representative of the defendant Department, plaintiffs fail to demonstrate sufficient grounds for excluding them. Finally, plaintiffs' desire to prevent certain representatives from attending the depositions is impractical. It is not likely that the City and/or Department can always predict that a particular representative will always be available to attend every deposition. In addition, despite plaintiffs' assertions that several persons who have attended the depositions had no reason to be there, defendants demonstrate that those persons (Ms. Rosoff and Ms. Arutyunyan) are a litigation assistant and paralegal, respectively, who are assisting defense counsel with the litigation of this matter.

Plaintiffs' request that the court delay its decision on this issue until their motion for protective order is heard on October 29, 2009 is denied. Plaintiff Elfego Rodriguez walked out of his deposition on August 10, 2009. Plaintiffs did

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 10/02/09

DEPT. 37

HONORABLE JOANNE O'DONNELL

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ELECTRONIC RECORDING MONITOR

N. AVALOS, C.A.

Deputy Sheriff

C. KWON-CHANG

Reporter

9:00 am

BC414602

Plaintiff

Solomon E. Gresen ✓

Counsel

RHEUBAN & GRESEN

OMAR RODRIGUEZ ET AL

VS

Defendant

Lawrence A. Michaels ✓

BURBANK POLICE DEPARTMENT ET AL

Counsel

MITCHELL SILBERBERG ET AL

170.6 DAVID P. YAFFE

Linda Miller Savitt ✓

R/F 7-27-09 Denied as to BC4179

BALLARD ROSENBERG ET AL

NATURE OF PROCEEDINGS:

not file the motion for protective order until September 21, 2009. Defendants filed their motion to compel his attendance at deposition on August 20, 2009 and are entitled to have a ruling on it without delay.

Omar Rodriguez deposition questions. Defendants seek testimony responsive to the following question: "Who did you give these documents to that I've marked as OR0401 through -585?" Plaintiffs' counsel's objection on the grounds that the question sought information violative of the attorney-client privilege is well-taken. The attorney-client privilege covers all forms of communication, including the transmission of specific documents. Mitchell v. Superior Court (1984) 37 Cal.3d 591, 600; Wellpoint Health Networks v. Superior Court (1997) 59 Cal.App.4th 110, 119. To the extent that plaintiff provided any or all of the documents to his attorney, such information is entitled to the attorney-client privilege. The fact of transmission triggers the privilege. Defendants argument that the transmission of the documents is not protected by the attorney-client privilege because the transmission does not provide any insight into case strategy is not persuasive. Even though the documents at issue were produced to defendants in response to defendants' discovery requests, it cannot be reasonably disputed that responding to the question would tend to reveal the significance that plaintiff and/or his counsel ascribe to the

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 10/02/09

DEPT. 37

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ELECTRONIC RECORDING MONITOR

N. AVALOS, C.A.

Deputy Sheriff

C. KWON-CHANG

Reporter

9:00 am BC414602

Plaintiff
Counsel

Solomon E. Gresen ✓
RHEUBAN & GRESEN

OMAR RODRIGUEZ ET AL

VS

Defendant
Counsel

Lawrence A. Michaels ✓
MITCHELL SILBERBERG ET AL

170.6 DAVID P. YAFFE

R/F 7-27-09 Denied as to BC4179

Linda Miller Savitt ✓
BALLARD ROSENBERG ET AL

NATURE OF PROCEEDINGS:

documents. The documents would not have been given to counsel (if they were) unless they had some significance to plaintiff's case. Thus, plaintiff's testimony regarding the fact of the transmission would tend to reveal the transmitter's intended strategy.

Discovery referee. A referee may be appointed on motion of any party or on the court's own motion where necessary "to hear and determine any and all discovery motions and disputes relevant to discovery in the action and to report findings and make a recommendation thereon." (CCP §639(a).) Appointment of a discovery referee is authorized only where "necessary" to hear and determine such motions or disputes. CCP §638(a)(5); Weil & Brown, Cal. Prac. Guide: Civ. Proc. Before Trial (The Rutter Group 2006) ¶8:1804-8:1804.1. The court finds that appointment of a discovery referee is necessary to hear and determine all discovery disputes, based on the Michaels declaration, which recites the "exceptional circumstances" that require the reference (CCP §639(d)(2)), and which plaintiffs' counsel does not refute. Appointment of a referee is justified where antagonism between the parties and/or counsel might otherwise prolong the proceedings and frustrate discovery. Weil & Brown, supra, ¶8:1804.5. Where no party has established an inability to pay a pro rata share of the referee's fees, the court may order the fees to be split on a pro rata basis. Id. at ¶8:1804.20. Plaintiffs make

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 10/02/09

DEPT. 37

HONORABLE JOANNE O'DONNELL

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H. A. SMITH

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JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

N. AVALOS, C.A.

Deputy Sheriff

C. KWON-CHANG

Reporter

9:00 am BC414602

Plaintiff

Solomon E. Gresen ✓

Counsel

RHEUBAN & GRESSEN

OMAR RODRIGUEZ ET AL

VS

Defendant

Lawrence A. Michaels ✓

BURBANK POLICE DEPARTMENT ET AL

Counsel

MITCHELL SILBERBERG ET AL

170.6 DAVID P. YAFFE

Linda Miller Savitt ✓

R/F 7-27-09 Denied as to BC4179

BALLARD ROSENBERG ET AL

NATURE OF PROCEEDINGS:

no showing that the cost of a discovery referee would be prohibitive or that they cannot not afford a pro rata share of the expenses.

Sanctions. Because both parties presented colorable arguments for their positions, imposition of sanctions against plaintiffs would be unjust. CCP §§ 2025.450(c)(1), 2025.480(f).

Plaintiff's motion for protective order, presently set for October 29, 2009, is advanced to this date and placed off calendar.

Counsel for plaintiff to give notice.

2

2

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2 VERONICA VON GRABOW (SBN 259859), vtv@msk.com
3 MITCHELL SILBERBERG & KNUPP LLP
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Telephone: (310) 312-2000
Facsimile: (310) 312-3100

CONFORMED COPY
ORIGINAL FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

SEP 29 2010

John A. Clarke, Executive Officer/Clerk
BY Glorietta Robinson Deputy

5 LINDA MILLER SAVITT (SBN 094164)
6 BALLARD, ROSENBERG, GOLPER & SAVITT LLP
500 North Brand Boulevard, Twentieth Floor
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10 SENIOR ASSISTANT CITY ATTORNEY - CITY OF BURBANK
275 East Olive Avenue
11 Burbank, California 91510
Telephone: (818) 238-5707
Facsimile: (818) 238-5724

12 Attorneys for Defendant and Cross-Complainant CITY OF BURBANK, including the
13 POLICE DEPARTMENT OF THE CITY OF BURBANK (erroneously sued as an
independent entity named "BURBANK POLICE DEPARTMENT")

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 FOR THE COUNTY OF LOS ANGELES

16 OMAR RODRIGUEZ; CINDY GUILLEN-
17 GOMEZ; STEVE KARAGIOSIAN; ELFEGO
RODRIGUEZ; AND JAMAL CHILDS,

18 Plaintiffs,

19 v.

20 BURBANK POLICE DEPARTMENT; CITY
21 OF BURBANK; AND DOES 1 THROUGH
100, INCLUSIVE,

22 Defendants.

23 BURBANK POLICE DEPARTMENT; CITY
24 OF BURBANK,

25 Cross-Complainants,

26 v.

27 OMAR RODRIGUEZ, an Individual;

28 Cross-Defendant.

CASE NO. BC 414602

[Assigned to Hon. Joanne O'Donnell, Dept. 37]

Date: October 1, 2010

Time: 9:00 a.m.

SUPPLEMENTAL DECLARATION OF
LAWRENCE A. MICHAELS IN
SUPPORT OF DEFENDANT BURBANK'S
OPPOSITION TO MOTION TO
DISQUALIFY ALL DEFENSE COUNSEL

File Date: May 28, 2009

Trial Date: April 13, 2011 (Plff. Guillen);

June 8, 2011 (Plff. Karagiosian);

July 27, 2011 (Plff. O. Rodriguez)

Discovery Referee: Hon. Diane Wayne, Ret.

Mitchell
Silberberg &
Knupp LLP

2965952.1

SUPPLEMENTAL DECLARATION OF LAWRENCE A. MICHAELS IN SUPPORT OF
DEFENDANT BURBANK'S OPPOSITION TO MOTION TO DISQUALIFY ALL DEFENSE COUNSEL.

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5. On June 16, 2010, Ms. Pelletier sent an email to Plaintiffs' counsel informing Plaintiffs that she and her firm were not counsel in the *Rodriguez* Action. A true and correct copy of the email is attached hereto as Exhibit B.

Executed at Los Angeles, California on September 29, 2010.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Lawrence A. Michaels
LAWRENCE A. MICHAELS

EXHIBIT A

EXHIBIT A



CITY OF BURBANK
OFFICE OF THE CITY ATTORNEY

275 East Olive Avenue • P.O. Box 6459 • Burbank, California 91510-6459
818.238.5700 • 818.238.5724 FAX

DENNIS A. BARLOW
City Attorney

JULI CHRISTINE SCOTT
Chief Assistant City Attorney

VIA Facsimile

April 8, 2010

Writers Direct Dial
(818)238-5707

Steven M. Cischke
Solomon E. Gresen
Law Offices of Rheuban & Gresen
15910 Ventura Boulevard, Suite 1610
Encino, California 91436

Re: Deposition of Russell Moore

Dear Mr. Cischke and Mr. Gresen,

I am in receipt of your facsimile of today's date, indicating an objection to the deposition of Russell Moore, which is set for tomorrow. Your letter indicates that taking Mr. Moore's deposition would violate Judge Rosenfield's order. That is not true. Judge Rosenfield's order not only did not address this issue, it was limited to the Dunn case. Judge Rosenfield did not and could not make any orders in the Rodriguez case, which is the case in which the City noticed Mr. Moore's deposition. If you were confused about this because of Ms. Pelletier's involvement, this will confirm that, as reflected in the notice, this deposition will take place in the Rodriguez case (Ms. Pelletier will be associating in as counsel in this case for this one limited purpose given the conflicts of other counsel). Mr. Moore's deposition is clearly relevant in the Karagiosian case, given Steve Karagiosian's allegations of retaliation by the City of Burbank, in general, and in particular, given his recent complaint that my conversation with Mr. Moore was another instance of such retaliation. It is also plainly relevant to Steve Karagiosian's credibility, which is also at issue in his lawsuit.

Please be advised that the City intends to go forward with the deposition as scheduled. Since you have refused to accede to Mr. Moore's request that the deposition be moved to Burbank for his convenience, the deposition will take place in Los Angeles as noticed.

Sincerely,

Carol Ann Humiston
Senior Assistant City Attorney

1 DENNIS A. BARLOW, CITY ATTORNEY
State Bar No. 63849
2 CAROL A. HUMISTON, SR. ASST. CITY ATTY.
State Bar No. 115592
3 275 East Olive Avenue
Burbank, California 91502
4 Telephone: (818) 238-5707
Facsimile: (818) 238-5724
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10 11377 West Olympic Boulevard
Los Angeles, California 90064-1683
11 Telephone: (310) 312-2000
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Attorneys for Defendant and Cross-Complainant
13 CITY OF BURBANK, including the POLICE
DEPARTMENT OF THE CITY OF BURBANK
14 (erroneously sued as an independent entity named
"BURBANK POLICE DEPARTMENT")
15

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA
17 FOR THE COUNTY OF LOS ANGELES
18

19 STEVE KARAGIOSIAN,
20 Plaintiff,

21 v.

22 BURBANK POLICE DEPARTMENT; CITY
OF BURBANK; and DOES I through 100,
23 inclusive,

24 Defendants.
25
26
27
28

Case No. BC 414602

Judge: Hon. Joanne O'Donnell
Dept.: 37

File Date: May 28, 2009
Trial Date: August 25, 2010

NOTICE OF ASSOCIATION OF
COUNSEL

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that defendant CITY OF BURBANK hereby associates in as
3 counsel, Kristin Pelletier, Burke, Williams & Sorenson, 444 S. Flower Street, Suite 2400, Los
4 Angeles, CA 90071, (213) 236-0600, facsimile (213) 236-2700.

5 DATED: April 8, 2010

6 DENNIS A. BARLOW
7 City Attorney

8
9 By: 

10 Carol Ann Humiston
11 Attorneys for Defendant
12 CITY OF BURBANK, including the
13 POLICE DEPARTMENT OF THE
14 CITY OF BURBANK (erroneously sued
15 as an independent entity named
16 "BURBANK POLICE DEPARTMENT")
17
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PROOF OF SERVICE
F.R.C.P. 5 / C.C.P. 1013a(3)/ Rules of Court, Rule 2060

I am a resident of, or employed in the County of Los Angeles, State of California. I am over the age of 18 years old and not a party to the within action. My business address is 275 E. Olive Avenue, Burbank, California 91502.

On April 8, 2010, I served the following listed document(s), **Notice of Association of Counsel** by method indicated below, on the party in this action:

Solomon E. Gresen
Steven V. Rheuban
Law Offices of Rheuban & Gresen
15910 Ventura Boulevard, Suite 1610
Encino, California 91436

☒ **BY U.S. MAIL**

By placing ☐ the original / ☒ a true copy thereof enclosed in a sealed envelope(s), with postage prepaid, addressed as per the attached service list, for collection and mailings at the City of Burbank in Burbank, California following ordinary business practices. I am readily familiar with the firm's practice for collection and processing of the document for mailing. Under that practice, the document is deposited with the United States Postal Service on the same day in the ordinary course of business. I am aware that upon motion of any party served, service is presumed invalid if the postal cancellation date or postage meter date on the envelope is more than one day after date of deposit for mailing contained in this affidavit.

☐ **BY ELECTRONIC SERVICE**
(via electronic filing service provider)

By electronically transmitting the document(s) listed above to LexisNexis File and Serve, an electronic filing service provider, at www.fileandserve.lexisnexis.com pursuant to the Court's _____ Order mandating electronic service. See Cal.R.Ct.R. 2053, 2055, 2060. The transmission was reported as complete and without error.

☐ **BY OVERNIGHT DELIVERY**

By delivering the document(s) listed above in a sealed envelope designated by the express service carrier, with delivery fees paid or provided for, addressed as per the above service list, to a facility regularly maintained by the express service carrier or to an authorized courier or driver authorized by the express service carrier to receive documents.

☐ **BY ELECTRONIC SERVICE**
(to individual person)

By electronically transmitting the document(s) listed above to the email address(es) of the person(s) set forth on the attached service list. The transmission was reported as complete and without error. See Rules of Court, rule 2060.

☐ **BY PERSONAL SERVICE**

☐ By personally delivering the document(s) listed above to the offices at the addressee(s) as shown on the attached service list.
☐ By placing the document(s) listed above in a sealed envelope(s) and instructing a registered process server to personally deliver the envelope(s) to the offices at the address(es) set forth on the attached service list. The signed proof of service by the registered process server is attached.

☐ **BY FACSIMILE**

By transmitting the document(s) listed above from City of Burbank-City Attorney's Office in Burbank, California to the facsimile machine telephone number(s) set forth on the attached service list. Service by facsimile transmission was made pursuant to agreement of the parties, confirmed in writing.

☒ **STATE**

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ **FEDERAL**

I declare under penalty of perjury under the laws of the United States that I am employed in the office of a member of the bar of this court at whose direction the service is made.

Executed April 8, 2010, at BURBANK, CALIFORNIA.

Lusine Arutyunyan
Type or Print Name

Signature

EXHIBIT B

EXHIBIT B

From: Pelletier, Kristin A. [mailto:KPelletier@bwsllaw.com]
Sent: Wednesday, June 16, 2010 6:16 PM
To: Daphne Johnson; Megan Moyer; Michaels, Larry; Linda Miller Savitt; Carol Ann Humiston
Cc: Joseph Levy
Subject: RE: Plaintiffs' Opposition to Defendant Burbank's Separate Statement

Daphne,

Per my prior correspondence, we are not counsel in the Rodriguez matter and should not be served with documents. Please remove us from your service list.

Kristin A. Pelletier
Partner

BURKE, WILLIAMS & SORESENSEN, LLP
444 South Flower Street
Suite 2400
Los Angeles, CA 90071
213.236.0600 phone
213.236.2700 fax
kpelletier@bwsllaw.com
www.bwsllaw.com

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IRS Circular 230 Disclosure: In compliance with certain U.S. Treasury regulations, please be informed that unless expressly stated otherwise, any U.S. federal tax advice contained in this communication, including attachments, was not intended or written to be used, and cannot be used, for the purpose of avoiding any penalties that may be imposed by the Internal Revenue Service. In addition, if any such advice is used or referred to by other parties in promoting, marketing or recommending any partnership or other entity, investment plan or arrangement, then (i) the advice should be construed as written and (ii) the taxpayer receiving said communication should seek advice based on the taxpayer's particular circumstances from an independent tax advisor.

From: Daphne Johnson [mailto:dj@rglawyers.com]
Sent: Wednesday, June 16, 2010 5:57 PM
To: Megan Moyer; Lawrence A. Michaels; Linda Miller Savitt; Carol Ann Humiston; Pelletier, Kristin A.
Cc: Joseph Levy
Subject: Plaintiffs' Opposition to Defendant Burbank's Separate Statement

Re: Rodriguez, et al v. City of Burbank/BPD

LASC Case No. BC 414602

Plaintiffs Opposition to Defendant's Motion to Compel Plaintiffs' Further Response to Defendant's First Set of Special Interrogatories and Related Documents.

Daphne Johnson, Secretary

LAW OFFICES OF RHEUBAN & GRESEN

15910 Ventura Boulevard, Suite 1610

Encino, California 91436

tel: 818.815.2727

fax: 818.815.2737

dj@rglawyers.com

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This message/attachments are confidential to the user of the e-mail to which it was addressed & may be privileged. If you are not the addressee do not copy, forward, disclose or use any part of the message/attachments. If you've received this message in error, notify the sender immediately by phone or e-mail & then delete it. Internet communications aren't guaranteed to be secure/error-free as e-mail could be intercepted, corrupted, lost, late or contain viruses. The sender does not accept liability for any errors or omissions in the context of this message. Any opinions contained in this message are those of the author and are not given or endorsed by Rheuban & Gresen through which this message is sent unless otherwise clearly indicated in this message and the authority of the author to so bind Rheuban & Gresen is duly verified.

1
2
3
4 **PROOF OF SERVICE**

42729-00001

5 *Rodriguez, et al. vs. Burbank Police Department, et al. — LASC Case No. BC414602*

6 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

7 I am employed in the county of Los Angeles, State of California. I am over the age of 18
8 and not a party to the within action. My business address is Mitchell Silberberg & Knupp LLP,
9 11377 West Olympic Boulevard, Los Angeles, California 90064-1683.

10 On September 29, 2010, I served a copy of the foregoing document(s) described as:
11 **SUPPLEMENTAL DECLARATION OF LAWRENCE A. MICHAELS IN SUPPORT OF**
12 **DEFENDANT BURBANK'S OPPOSITION TO MOTION TO DISQUALIFY ALL**
13 **DEFENSE COUNSEL** on the interested parties in this action at their last known address as set
14 forth below by taking the action described below:

15 Solomon E. Gresen, Esq., seg@rglawyers.com

16 Steven V. Rheuban, Esq., svr@rglawyers.com

17 Law Offices of Rheuban & Gresen

18 15910 Ventura Boulevard, Suite 1610

19 Encino, CA 91436

20 T: (818) 815-2727

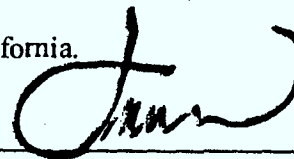
21 F: (818) 815-2737

22 *Attorneys for Plaintiffs Omar Rodriguez, Cindy Guillen-Gomez, Steve*
23 *Karagiosian, Elfego Rodriguez, and Jamal Childs*

24 ☒ **BY PERSONAL DELIVERY:** I placed the above-mentioned document(s) in sealed
25 envelope(s), and caused personal delivery by **FIRST LEGAL SUPPORT SERVICES** of
26 the document(s) listed above to the person(s) at the address(es) set forth above.

27 I declare under penalty of perjury under the laws of the State of California that the above is
28 true and correct.

Executed on September 29, 2010, at Los Angeles, California.



Isabel G. Moreno

1 **PROOF OF SERVICE**

2 42729-00001

3 *Rodriguez, et al. vs. Burbank Police Department, et al. — LASC Case No. BC414602*

4 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

5 I am employed in the county of Los Angeles, State of California.

6 I am over the age of 18, and not a party to the within action; my business address is FIRST
7 LEGAL SUPPORT SERVICES, 1511 West Beverly Boulevard, Los Angeles, CA 90026.

8 On September 29, 2010, I served the foregoing document(s) described as
9 **SUPPLEMENTAL DECLARATION OF LAWRENCE A. MICHAELS IN SUPPORT OF**
10 **DEFENDANT BURBANK'S OPPOSITION TO MOTION TO DISQUALIFY ALL**
11 **DEFENSE COUNSEL** which was enclosed in sealed envelopes addressed as follows, and taking
12 the action described below:

13 Solomon E. Gresen, Esq., seg@rglawyers.com
14 Steven V. Rheuban, Esq., svr@rglawyers.com
15 Law Offices of Rheuban & Gresen
16 15910 Ventura Boulevard, Suite 1610
Encino, CA 91436
T: (818) 815-2727
F: (818) 815-2737
Attorneys for Plaintiffs Omar Rodriguez, Cindy Guillen-Gomez, Steve Karagiosian, Elfege Rodriguez, and Jamal Childs

17 ☒ **BY PERSONAL SERVICE:** I hand delivered such envelope(s):

18 ☐ to the addressee(s);

19 ☒ to the receptionist/clerk/secretary in the office(s) of the addressee(s).

20 ☐ by leaving the envelope in a conspicuous place at the office of the addressee(s)
21 between the hours of 9:00 a.m. and 5:00 p.m.

22 I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

23 Executed on September 29, 2010, at Los Angeles, California.

24 EDGAR KOSTANDYAN

25 Printed Name

26 Edgar K
27 Signature

3

3

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 05/18/11

DEPT. 37

HONORABLE JOANNE O'DONNELL

JUDGE

E.T. ESPINOZA

DEPUTY CLERK

HONORABLE
#

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

G.S. HIRONAKA, C/A

Deputy Sheriff

NONE

Reporter

9:06 am

BC414602

Plaintiff
Counsel

OMAR RODRIGUEZ ET AL

NO APPEARANCES

VS

Defendant

BURBANK POLICE DEPARTMENT ET AL

Counsel

170.6 DAVID P. YAFFE

R/F 7-27-09 Denied as to BC4179

NATURE OF PROCEEDINGS:

RULING RE SUBMITTED MATTER

The Court having taken Motion of Defendant, City of Burbank (including the Police Department of the City of Burbank) for Summary Judgment/Adjudication (Rodriguez) under submission on May 17, 2011, now orders as follows:

Plaintiff's objections to defendant's evidence are ruled on as follows: 1-3, overruled; 4, sustained; 5-15ii, overruled. Defendant's objections to plaintiff's evidence are ruled on as follows: 14, 25, 43, 75 and 105, sustained. The remaining objections are overruled.

The court has not considered the additional evidence that defendant supplied with its reply brief. San Diego Watercrafts, Inc. v. Wells Fargo Bank, N.A. (2002) 102 Cal. App. 4th 308, 316. The court has, however, considered defendant's response to plaintiff's separate statement of additional material facts. Nazir v. United Airlines, Inc. (2009) 178 Cal. App. 4th 243, 249.

Summary judgment is granted.

Issue No. 1 -- First Cause of Action for Discrimination in Violation of FEHA. To prevail on a discrimination claim, a plaintiff must prove that he was (1) in a protected class, (2) performing

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 05/18/11

DEPT. 37

HONORABLE JOANNE O'DONNELL

JUDGE

E.T. ESPINOZA

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HONORABLE
#

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

G.S. HIRONAKA, C/A

Deputy Sheriff

NONE

Reporter

9:06 am

BC414602

Plaintiff

Counsel

OMAR RODRIGUEZ ET AL

NO APPEARANCES

VS

Defendant

BURBANK POLICE DEPARTMENT ET AL

Counsel

170.6 DAVID P. YAFFE

R/F 7-27-09 Denied as to BC4179

NATURE OF PROCEEDINGS:

satisfactorily in his job, (3) he suffered an adverse employment action, and (4) the action occurred under circumstances suggesting a discriminatory motive. *Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 355; Gov. Code, § 12940 subd. (a).

Defendant's argument that it has met its initial burden by showing that plaintiff never suffered an adverse employment action is without merit. "A materially adverse change might be indicated by a termination of employment, a demotion evidenced by a decrease in wage or salary, a less distinguished title, a material loss of benefits, significantly diminished material responsibilities, or other indices that might be unique to a particular situation." *Thomas v. Dept. of Corrections* (2000) 77 Cal.App.4th 507, 511. Placing plaintiff on administrative leave was arguably an adverse employment action. Forcing plaintiff to give up all duties and responsibilities of his job for a appreciable amount of time is a clear change in the "terms, conditions, [and] privileges" of plaintiff's employment. *Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1054-1055 (Id.)

Defendant, does, however, meet its initial burden of summary adjudication as to the first cause of action by providing evidence that it had a non discriminatory and legitimate reason for placing

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

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JUDGE

E.T. ESPINOZA

DEPUTY CLERK

HONORABLE
#

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

G.S. HIRONAKA, C/A

Deputy Sheriff

NONE

Reporter

9:06 am

BC414602

Plaintiff
Counsel

OMAR RODRIGUEZ ET AL

NO APPEARANCES

VS

Defendant

BURBANK POLICE DEPARTMENT ET AL

Counsel

170.6 DAVID P. YAFFE

R/F 7-27-09 Denied as to BC4179

NATURE OF PROCEEDINGS:

plaintiff on paid administrative leave. Specifically, defendant provides evidence that it placed plaintiff on administrative leave pending an investigation of misconduct that arose out of a fellow officer's statement that plaintiff forced him through threats to not comply with an earlier investigation into plaintiff's alleged misconduct with a robbery suspect. (UMF #17, 18, 20, 21. Chief Stehr put plaintiff on administrative leave pending the outcome of the reopened investigation so as to avoid any possible witness intimidation by plaintiff. (UMF # 30.) The burden shifts to plaintiff to rebut the defendant's evidence with evidence that raises an inference that the defendant's given reason for placing him on administrative leave is pretext and that the real reason was intentional discrimination based on his national origin. Plaintiff's argument that the detective's claim that he was threatened into silence about plaintiff's misconduct was not really the motivating reason for the administrative leave but that instead the leave was motivated by the police Chief's anger at plaintiff for complaining to the Mayor and Vice Mayor about discrimination problems in the department is not supported by plaintiff's evidence. Plaintiff's evidence that he talked with the Mayor does not support his claim that he talked with the mayor about discrimination issues. The evidence instead shows that plaintiff talked with the Mayor about a feud between the

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

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JUDGE

E.T. ESPINOZA

DEPUTY CLERK

HONORABLE
#

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

G.S. HIRONAKA, C/A

Deputy Sheriff

NONE

Reporter

9:06 am

BC414602

Plaintiff
Counsel

OMAR RODRIGUEZ ET AL

NO APPEARANCES

VS

Defendant

BURBANK POLICE DEPARTMENT ET AL

Counsel

170.6 DAVID P. YAFFE

R/F 7-27-09 Denied as to BC4179

NATURE OF PROCEEDINGS:

president of the Burbank Police Officer Association, Parrinello, and deputy Chief Taylor. (PDF # 124-133.) Plaintiff's evidence that the Chief retaliated against plaintiff because plaintiff had complained about him to other officers, called the Chief bipolar, said he was crazy, criminal, needed medication, needed to be fired, and that they needed to get rid of him immediately (Plaintiff's Disputed Facts ("PDF") # 151, 153) do not require a different result. None of these facts, if believed, suggest that plaintiff was not placed on leave to prevent him from intimidating witnesses during the reopened investigation, and that the real reason defendant was placed on leave was discrimination based on his national origin.

Because plaintiff has not met his burden of showing the existence of a triable issue, defendant is entitled to summary adjudication of the first cause of action.

Issue No. 2 -- Second Cause of Action for Harassment in Violation of FEHA. To establish unlawful harassment that is actionable under FEHA, a plaintiff must establish (1) she belongs to a protected group; (2) she was subjected to unwelcome acts or words based on his protected status; (3) the workplace was permeated with discriminatory intimidation, ridicule and insult that is so pervasive or severe it altered the conditions of

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

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DEPT. 37

HONORABLE JOANNE O'DONNELL

JUDGE

E.T. ESPINOZA

DEPUTY CLERK

HONORABLE
#

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

G.S. HIRONAKA, C/A

Deputy Sheriff

NONE

Reporter

9:06 am

BC414602

Plaintiff
Counsel

OMAR RODRIGUEZ ET AL

NO APPEARANCES

VS

Defendant

BURBANK POLICE DEPARTMENT ET AL

Counsel

170.6 DAVID P. YAFFE

R/F 7-27-09 Denied as to BC4179

NATURE OF PROCEEDINGS:

employment and created an abusive working environment; and (4) respondeat superior. Fisher v. San Pedro Peninsula Hospital (1989) 214 Cal.App.3d 590, 610; Aguilar v. Avis Rent A Car System, Inc. (1999) 21 Cal.4th 121, 130. The conduct must be extreme: "[O]ccasional, isolated, sporadic or trivial" acts cannot support a harassment claim as a matter of law. Fisher v. San Pedro Peninsula Hospital (1989) 214 Cal.App.3d 590, 610. Plaintiff is a Cuban American man. (UMF # 35.) Plaintiff admitted that since 2002 nobody ever directed any racial or ethnic slurs at him. (UMF #36.) This evidence is sufficient to support defendant's initial burden as it shows plaintiff cannot prove that he was subjected to unwelcome treatment based on his protected status as a Cuban American. The burden therefore shifts to plaintiff to show there is a triable issue of material fact concerning the elements of his harassment claim. The evidence plaintiff offers, however (UMF #36, 37, 52, 56, 93, 113, 116, 167, 168, 169, 170, 178-87) only supports the claim that plaintiff received messages stating that he was a "nigger lover" and received notes that had anti gay messages scribbled on them. While these messages are hateful and inappropriate for the workplace, they are not directed at plaintiff's national origin and plaintiff has never claimed to be the victim of discrimination based on his sexual orientation. Similarly, evidence that plaintiff heard inappropriate workplace comments about women,

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

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HONORABLE JOANNE O'DONNELL

JUDGE

E.T. ESPINOZA

DEPUTY CLERK

HONORABLE
#

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

G.S. HIRONAKA, C/A

Deputy Sheriff

NONE

Reporter

9:06 am

BC414602

Plaintiff

Counsel

OMAR RODRIGUEZ ET AL

NO APPEARANCES

VS

Defendant

BURBANK POLICE DEPARTMENT ET AL

Counsel

170.6 DAVID P. YAFFE

R/F 7-27-09 Denied as to BC4179

NATURE OF PROCEEDINGS:

Armenians, African Americans, and gays does not show that plaintiff himself was the subject of work place harassment based on his race, ethnicity, sexual orientation, or gender. Plaintiff cannot maintain a harassment suit on behalf of others who suffered harassment in the police department. Thompson v. City of Monrovia (2010) 186 Cal.App.4th 860, 877-78. In any event, even the evidence of comments that could be construed to be harassment directed at plaintiff on account of his national origin are not frequent or severe enough to constitute harassment under FEHA as a matter of law. Finally, Plaintiff's citation to the deposition of another officer who claims that he heard disparaging remarks about people of Hispanic descent at the police department do not create a triable issue whether plaintiff was harassed because of his national origin. A "plaintiff generally must show that the harassment directed at others was in her immediate work environment, and that she personally witnessed it. The reason for this is obvious: if the plaintiff does not witness the incidents involving others, 'those incidents cannot affect . . . her perception of the hostility of the work environment.'" Lyle v. Warner Bros. Television Productions (2006) 38 Cal.4th 264, 285. Accordingly, plaintiff has not met his burden of showing the existence of a triable issue on his harassment claim and defendant is entitled to summary adjudication of plaintiff's second cause of action.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 05/18/11

DEPT. 37

HONORABLE JOANNE O'DONNELL

JUDGE

E.T. ESPINOZA

DEPUTY CLERK

HONORABLE
#

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

G.S. HIRONAKA, C/A

Deputy Sheriff

NONE

Reporter

9:06 am

BC414602

Plaintiff
Counsel

OMAR RODRIGUEZ ET AL

NO APPEARANCES

VS

Defendant

BURBANK POLICE DEPARTMENT ET AL

Counsel

170.6 DAVID P. YAFFE

R/F 7-27-09 Denied as to BC4179

NATURE OF PROCEEDINGS:

Issue No. 3 -- Third Cause of Action for Retaliation in Violation of FEHA. To state a prima facie case of FEHA retaliation, a plaintiff must show that (1) he engaged in "protected activity" by complaining to the employer of discrimination or participating in activities opposing the employer's practices reasonably believed to be unlawful under §12940, (2) the decision maker took an adverse employment action against plaintiff, and (3) the action would not have been taken but for the complaint. *Mokler v. County of Orange* (2007) 157 Cal.App.4th 121, 138.

As explained above, defendant does not meet its burden of showing that placing plaintiff on leave was not an "adverse employment action." However, defendant does meet its initial burden by providing evidence supporting a non-retaliatory legitimate reason for the adverse employment action and, thus, that plaintiff cannot prove that he would not have been placed on administrative leave but for the complaint. As explained above, defendant has sufficiently established that plaintiff was put on leave because of accusations from a fellow officer that plaintiff had threatened him into silence during an investigation into plaintiff's alleged misconduct with a robbery suspect. Plaintiff fails to provide any evidence that he would not have been placed on administrative leave if it weren't for his complaints about discrimination. Because plaintiff fails to show the existence of a triable issue

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

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HONORABLE JOANNE O'DONNELL

JUDGE

E.T. ESPINOZA

DEPUTY CLERK

HONORABLE
#

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

G.S. HIRONAKA, C/A

Deputy Sheriff

NONE

Reporter

9:06 am

BC414602

Plaintiff
Counsel

OMAR RODRIGUEZ ET AL

NO APPEARANCES

VS

Defendant

BURBANK POLICE DEPARTMENT ET AL

Counsel

170.6 DAVID P. YAFFE

R/F 7-27-09 Denied as to BC4179

NATURE OF PROCEEDINGS:

concerning his retaliation cause of action, summary adjudication of that cause of action is proper.

Issue No. 4 -- Fifth cause of action for Failure to Take Reasonable Steps to Prevent Harassment, Discrimination, and Retaliation in Violation of FEHA. Actionable harassment or discrimination is a necessary prerequisite to a failure to prevent claim. Trujillo v. North County Transit District(1998) 63 Cal.App.4th 280. Defendant has met its initial burden by showing that plaintiff cannot support his claims for harassment, retaliation, or discrimination with evidence, as explained above. Also as explained above, plaintiff has not met the resulting burden to proffer evidence showing a triable issue of material fact concerning these claims. Because plaintiff fails to show the existence of a triable issue as to the fifth cause of action, summary adjudication of that cause of action is proper.

Issue No. 5 -- Sixth Cause of Action for Violation of the Public Safety Officers Procedural Bill of Rights ("POBRA"). Prior to filing a suit for money damages against a government entity, a plaintiff must file a claim with the entity pursuant to the Government Claims Act. Gov't Code § 900 et seq. Defendant meets its initial burden by showing that plaintiff never filed a government claim that mentioned the POBRA claim that plaintiff now wishes

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 05/18/11

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HONORABLE JOANNE O'DONNELL

JUDGE

E.T. ESPINOZA

DEPUTY CLERK

HONORABLE
#

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

G.S. HIRONAKA, C/A

Deputy Sheriff

NONE

Reporter

9:06 am

BC414602

Plaintiff
Counsel

OMAR RODRIGUEZ ET AL

NO APPEARANCES

VS

Defendant

BURBANK POLICE DEPARTMENT ET AL

Counsel

170.6 DAVID P. YAFFE

R/F 7-27-09 Denied as to BC4179

NATURE OF PROCEEDINGS:

to assert. On May 27, 2009, plaintiff filed a government claim act claim. (UMF # 77.) This claim makes no mention of the POBRA claims that plaintiff now asserts. Plaintiff's argument that it has evidence supporting violations of POBRA, including evidence that Chief Stehr discussed discipline of an officer with other officers, that defendant searched and confiscated plaintiff's property without a warrant, and that defendant ordered plaintiff to refrain from communicating with fellow officers during his administrative leave, and that defendant interrogated plaintiff without the proper safeguards (PDF # 150, 190) does not create a triable issue because it does not address defendant's claim that plaintiff failed to file a claim for the POBRA violations. In any event, Plaintiff's government claims act claim makes no mention of any of the violations of which plaintiff now asserts he has evidence. (UMF # 77; FAC, Ex. B.) Nothing in plaintiff's government claim put the department on notice of any illegal search and seizure, unlawful interrogation, or breach of officer privacy claim, the claims which plaintiff now wishes to assert through POBRA. Because plaintiff fails to create a triable issue as to his POBRA claim, defendant is entitled to summary adjudication of that issue.

Issue No. 6 -- Seventh Cause of Action for Injunctive Relief. Defendant has met its burden by showing that plaintiff cannot support any of the

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 05/18/11

DEPT. 37

HONORABLE JOANNE O'DONNELL

JUDGE E.T. ESPINOZA

DEPUTY CLERK

HONORABLE
#

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

G.S. HIRONAKA, C/A

Deputy Sheriff

NONE

Reporter

9:06 am BC414602

Plaintiff
Counsel

OMAR RODRIGUEZ ET AL

NO APPEARANCES

VS

Defendant

BURBANK POLICE DEPARTMENT ET AL

Counsel

170.6 DAVID P. YAFFE

R/F 7-27-09 Denied as to BC4179

NATURE OF PROCEEDINGS:

claims on which the request for injunction is premised. Plaintiff's opposition fails to address this claim. Accordingly, summary adjudication of this issue is appropriate.

Because summary adjudication of all the issues is proper and effectively disposes of all of the claims against defendant, summary judgment of Rodriguez's claims against defendant is warranted.

CLERK'S CERTIFICATE OF MAILING/ NOTICE OF ENTRY OF ORDER

I, the below named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that this date I served Notice of Entry of the above minute order of May 18, 2011 upon each party or counsel named below by depositing in the United States mail at the courthouse in Los Angeles, California, one copy of the original entered herein in a separate sealed envelope for each, addressed as shown below with the postage thereon fully prepaid.

Date: May 18, 2011

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 05/18/11

DEPT. 37

HONORABLE JOANNE O'DONNELL

JUDGE E.T. ESPINOZA

DEPUTY CLERK

HONORABLE
#

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

G.S. HIRONAKA, C/A

Deputy Sheriff

NONE

Reporter

9:06 am BC414602

Plaintiff
Counsel

OMAR RODRIGUEZ ET AL

NO APPEARANCES

VS

Defendant

BURBANK POLICE DEPARTMENT ET AL Counsel

170.6 DAVID P. YAFFE

R/F 7-27-09 Denied as to BC4179

NATURE OF PROCEEDINGS:

John A. Clarke, Executive Officer/Clerk

By: E.T. Espinoza
E T Espinoza

Solomon Gresen
Law Offices of Rheuban & Gresen
15910 Ventura Blvd., Suite 1610
Encino, CA 91436

Lawrence Michaels/Veronica Von Grabow
Mitchell, Silberberg & Knupp, LLP
11377 W. Olympic Blvd.
Los Angeles, CA 90064-1683

4

4

1 LAWRENCE A. MICHAELS (SBN 107260), lam@msk.com
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4 Los Angeles, California 90064-1683
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5 LINDA MILLER SAVITT (SBN 094164)
6 BALLARD, ROSENBERG, GOLPER & SAVITT LLP
500 North Brand Boulevard, Twentieth Floor
7 Glendale, California 91203-9946
Telephone: (818) 508-3700
Facsimile: (818) 506-4827

8 CAROL A. HUMISTON (SBN 115592)
9 SENIOR ASSISTANT CITY ATTORNEY – CITY OF BURBANK
275 East Olive Avenue
10 Burbank, California 91510
Telephone: (818) 238-5707
11 Facsimile: (818) 238-5724

12 Attorneys for Defendant and Cross-Complainant CITY OF BURBANK, including the
13 POLICE DEPARTMENT OF THE CITY OF BURBANK (erroneously sued as an
independent entity named "BURBANK POLICE DEPARTMENT")

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 FOR THE COUNTY OF LOS ANGELES

16 OMAR RODRIGUEZ; CINDY GUILLEN-
17 GOMEZ; STEVE KARAGIOSIAN; ELFEGO
RODRIGUEZ; AND JAMAL CHILDS,

18 Plaintiffs,

19 v.

20 BURBANK POLICE DEPARTMENT; CITY
OF BURBANK; AND DOES 1 THROUGH
21 100, INCLUSIVE,

22 Defendants.

23 BURBANK POLICE DEPARTMENT; CITY
OF BURBANK,

24 Cross-Complainants,

25 v.

26 OMAR RODRIGUEZ, an Individual;

27 Cross-Defendant.

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

JUN 16 2011

John A. Clarke, Executive Officer/Clerk
By E. T. Espinoza, Deputy

Case No. BC 414602

~~PROPOSED~~ ORDER ON DEFENDANT CITY
OF BURBANK'S MOTION FOR SUMMARY
JUDGMENT AGAINST PLAINTIFF OMAR
RODRIGUEZ

Judge: The Honorable Joanne O'Donnell
Location: 37

File Date: May 28, 2009
Trial Date: April 13, 2011 (Plff. Guillen);
June 8, 2011 (Plff. Karagiosian);
July 27, 2011 (Plff. O. Rodriguez)

Discovery Referee: Hon. Diane Wayne, Ret.

Mitchell
Silberberg &
Knupp LLP

3831897.1

[PROPOSED] ORDER ON BURBANK'S MOTION FOR SUMMARY JUDGMENT AGAINST O. RODRIGUEZ

1 On May 17, 2011, the motion of Defendant City of Burbank for summary
2 judgment/summary adjudication of issues against Plaintiff Omar Rodriguez came on regularly for
3 hearing at 9:00 a.m. before the Honorable Joanne O'Donnell, in Department 37 of the above-
4 entitled Court. Solomon E. Gresen appeared for Plaintiff Omar Rodriguez. Lawrence A.
5 Michaels and Veronica von Grabow appeared for Defendant City of Burbank.

6 The Court, having considered the moving, opposing and reply papers and the argument of
7 counsel, ordered that Defendant City of Burbank is entitled to summary judgment against Plaintiff
8 Omar Rodriguez on the complaint, pursuant to Code Civ. Proc. § 437c.

9 The Court's reasons are fully set forth in the transcript from the hearing and in the attached
10 minute order of May 18, 2011, all of which are incorporated herein by reference. The Court ruled
11 on each party's objections as set forth in the attached May 18, 2011 minute order.

12 In granting Defendant City of Burbank's motion for summary judgment against Omar
13 Rodriguez on the complaint, the Court did not summarily adjudicate any claims in Defendant City
14 of Burbank's cross-complaint against Omar Rodriguez, and that cross-complaint is still pending.

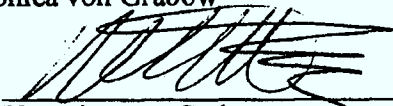
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16 DATED: JUN 16 2011

JOANNE B. O'DONNELL
HONORABLE JOANNE O'DONNELL

17
18 Submitted by:

19 Dated: May 25, 2011

20 MITCHELL SILBERBERG & KNUPP LLP
Lawrence A. Michaels
Veronica von Grabow

21
22 By: 
23 Veronica von Grabow
24 Attorneys for Defendants and
25 Cross-Complainant CITY OF BURBANK,
26 including the POLICE DEPARTMENT OF
27 THE CITY OF BURBANK (erroneously
28 sued as an independent entity named
"BURBANK POLICE DEPARTMENT")

MAY 18, 2011 MINUTE ORDER

MAY 18, 2011 MINUTE ORDER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 05/18/11

DEPT. 37

HONORABLE JOANNE O'DONNELL

JUDGE

E.T. ESPINOZA

DEPUTY CLERK

HONORABLE
#

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

G.S. HIRONAKA, C/A

Deputy Sheriff

NONE

Reporter

9:06 am

BC414602

Plaintiff
Counsel

OMAR RODRIGUEZ ET AL

NO APPEARANCES

VS

Defendant
Counsel

BURBANK POLICE DEPARTMENT ET AL

170.6 DAVID P. YAFFE

R/F 7-27-09 Denied as to BC4179

NATURE OF PROCEEDINGS:

RULING RE SUBMITTED MATTER

The Court having taken Motion of Defendant, City of Burbank (including the Police Department of the City of Burbank) for Summary Judgment/Adjudication (Rodriguez) under submission on May 17, 2011, now orders as follows:

Plaintiff's objections to defendant's evidence are ruled on as follows: 1-3, overruled; 4, sustained; 5-15ii, overruled. Defendant's objections to plaintiff's evidence are ruled on as follows: 14, 25, 43, 75 and 105, sustained. The remaining objections are overruled.

The court has not considered the additional evidence that defendant supplied with its reply brief. San Diego Watercrafts, Inc. v. Wells Fargo Bank, N.A.(2002) 102 Cal. App. 4th 308, 316. The court has, however, considered defendant's response to plaintiff's separate statement of additional material facts. Nazir v. United Airlines, Inc.(2009) 178 Cal. App. 4th 243, 249.

Summary judgment is granted.

Issue No. 1 -- First Cause of Action for Discrimination in Violation of FEHA. To prevail on a discrimination claim, a plaintiff must prove that he was (1) in a protected class, (2) performing

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

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HONORABLE
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JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

G.S. HIRONAKA, C/A

Deputy Sheriff

NONE

Reporter

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BC414602

Plaintiff
Counsel

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NO APPEARANCES

VS

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NATURE OF PROCEEDINGS:

satisfactorily in his job, (3) he suffered an adverse employment action, and (4) the action occurred under circumstances suggesting a discriminatory motive. *Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 355; Gov. Code, § 12940 subd. (a).

Defendant's argument that it has met its initial burden by showing that plaintiff never suffered an adverse employment action is without merit. "A materially adverse change might be indicated by a termination of employment, a demotion evidenced by a decrease in wage or salary, a less distinguished title, a material loss of benefits, significantly diminished material responsibilities, or other indices that might be unique to a particular situation." *Thomas v. Dept. of Corrections* (2000) 77 Cal.App.4th 507, 511. Placing plaintiff on administrative leave was arguably an adverse employment action. Forcing plaintiff to give up all duties and responsibilities of his job for a appreciable amount of time is a clear change in the "terms, conditions, [and] privileges" of plaintiff's employment. *Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1054-1055 (Id.)

Defendant, does, however, meet its initial burden of summary adjudication as to the first cause of action by providing evidence that it had a non discriminatory and legitimate reason for placing

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

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HONORABLE
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JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

G.S. HIRONAKA, C/A

Deputy Sheriff

NONE

Reporter

9:06 am

BC414602

Plaintiff

Counsel

OMAR RODRIGUEZ ET AL

NO APPEARANCES

VS

Defendant

BURBANK POLICE DEPARTMENT ET AL

Counsel

170.6 DAVID P. YAFFE

R/F 7-27-09 Denied as to BC4179

NATURE OF PROCEEDINGS:

plaintiff on paid administrative leave. Specifically, defendant provides evidence that it placed plaintiff on administrative leave pending an investigation of misconduct that arose out of a fellow officer's statement that plaintiff forced him through threats to not comply with an earlier investigation into plaintiff's alleged misconduct with a robbery suspect. (UMF #17, 18, 20, 21. Chief Stehr put plaintiff on administrative leave pending the outcome of the reopened investigation so as to avoid any possible witness intimidation by plaintiff. (UMF # 30.) The burden shifts to plaintiff to rebut the defendant's evidence with evidence that raises an inference that the defendant's given reason for placing him on administrative leave is pretext and that the real reason was intentional discrimination based on his national origin. Plaintiff's argument that the detective's claim that he was threatened into silence about plaintiff's misconduct was not really the motivating reason for the administrative leave but that instead the leave was motivated by the police Chief's anger at plaintiff for complaining to the Mayor and Vice Mayor about discrimination problems in the department is not supported by plaintiff's evidence. Plaintiff's evidence that he talked with the Mayor does not support his claim that he talked with the mayor about discrimination issues. The evidence instead shows that plaintiff talked with the Mayor about a feud between the

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

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HONORABLE
#

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

G.S. HIRONAKA, C/A

Deputy Sheriff

NONE

Reporter

9:06 am

BC414602

Plaintiff
Counsel

OMAR RODRIGUEZ ET AL

NO APPEARANCES

VS

Defendant

BURBANK POLICE DEPARTMENT ET AL

Counsel

170.6 DAVID P. YAFFE

R/F 7-27-09 Denied as to BC4179

NATURE OF PROCEEDINGS:

president of the Burbank Police Officer Association, Parrinello, and deputy Chief Taylor. (PDF # 124-133.) Plaintiff's evidence that the Chief retaliated against plaintiff because plaintiff had complained about him to other officers, called the Chief bipolar, said he was crazy, criminal, needed medication, needed to be fired, and that they needed to get rid of him immediately (Plaintiff's Disputed Facts ("PDF") # 151, 153) do not require a different result. None of these facts, if believed, suggest that plaintiff was not placed on leave to prevent him from intimidating witnesses during the reopened investigation, and that the real reason defendant was placed on leave was discrimination based on his national origin.

Because plaintiff has not met his burden of showing the existence of a triable issue, defendant is entitled to summary adjudication of the first cause of action.

Issue No. 2 -- Second Cause of Action for Harassment in Violation of FEHA. To establish unlawful harassment that is actionable under FEHA, a plaintiff must establish (1) she belongs to a protected group; (2) she was subjected to unwelcome acts or words based on his protected status; (3) the workplace was permeated with discriminatory intimidation, ridicule and insult that is so pervasive or severe it altered the conditions of

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

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HONORABLE
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JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

G.S. HIRONAKA, C/A

Deputy Sheriff

NONE

Reporter

9:06 am

BC414602

Plaintiff
Counsel

OMAR RODRIGUEZ ET AL

NO APPEARANCES

VS

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Counsel

BURBANK POLICE DEPARTMENT ET AL

170.6 DAVID P. YAFFE

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NATURE OF PROCEEDINGS:

employment and created an abusive working environment; and (4) respondeat superior. Fisher v. San Pedro Peninsula Hospital (1989) 214 Cal.App.3d 590, 610; Aguilar v. Avis Rent A Car System, Inc. (1999) 21 Cal.4th 121, 130. The conduct must be extreme: "[O]ccasional, isolated, sporadic or trivial" acts cannot support a harassment claim as a matter of law. Fisher v. San Pedro Peninsula Hospital (1989) 214 Cal.App.3d 590, 610. Plaintiff is a Cuban American man. (UMF # 35.) Plaintiff admitted that since 2002 nobody ever directed any racial or ethnic slurs at him. (UMF #36.) This evidence is sufficient to support defendant's initial burden as it shows plaintiff cannot prove that he was subjected to unwelcome treatment based on his protected status as a Cuban American. The burden therefore shifts to plaintiff to show there is a triable issue of material fact concerning the elements of his harassment claim. The evidence plaintiff offers, however (UMF #36, 37, 52, 56, 93, 113, 116, 167, 168, 169, 170, 178-87) only supports the claim that plaintiff received messages stating that he was a "nigger lover" and received notes that had anti gay messages scribbled on them. While these messages are hateful and inappropriate for the workplace, they are not directed at plaintiff's national origin and plaintiff has never claimed to be the victim of discrimination based on his sexual orientation. Similarly, evidence that plaintiff heard inappropriate workplace comments about women,

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ELECTRONIC RECORDING MONITOR

G.S. HIRONAKA, C/A

Deputy Sheriff

NONE

Reporter

9:06 am

BC414602

Plaintiff
Counsel

OMAR RODRIGUEZ ET AL

NO APPEARANCES

VS

Defendant
Counsel

BURBANK POLICE DEPARTMENT ET AL

170.6 DAVID P. YAFFE

R/F 7-27-09 Denied as to BC4179

NATURE OF PROCEEDINGS:

Armenians, African Americans, and gays does not show that plaintiff himself was the subject of work place harassment based on his race, ethnicity, sexual orientation, or gender. Plaintiff cannot maintain a harassment suit on behalf of others who suffered harassment in the police department. Thompson v. City of Monrovia (2010) 186 Cal.App.4th 860, 877-78. In any event, even the evidence of comments that could be construed to be harassment directed at plaintiff on account of his national origin are not frequent or severe enough to constitute harassment under FEHA as a matter of law. Finally, Plaintiff's citation to the deposition of another officer who claims that he heard disparaging remarks about people of Hispanic descent at the police department do not create a triable issue whether plaintiff was harassed because of his national origin. A "plaintiff generally must show that the harassment directed at others was in her immediate work environment, and that she personally witnessed it. The reason for this is obvious: if the plaintiff does not witness the incidents involving others, 'those incidents cannot affect . . . her perception of the hostility of the work environment.'" Lyle v. Warner Bros. Television Productions (2006) 38 Cal.4th 264, 285. Accordingly, plaintiff has not met his burden of showing the existence of a triable issue on his harassment claim and defendant is entitled to summary adjudication of plaintiff's second cause of action.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

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HONORABLE
#

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

G.S. HIRONAKA, C/A

Deputy Sheriff

NONE

Reporter

9:06 am

BC414602

Plaintiff
Counsel

OMAR RODRIGUEZ ET AL

NO APPEARANCES

VS

Defendant
Counsel

BURBANK POLICE DEPARTMENT ET AL

170.6 DAVID P. YAFFE

R/F 7-27-09 Denied as to BC4179

NATURE OF PROCEEDINGS:

Issue No. 3 -- Third Cause of Action for Retaliation in Violation of FEHA. To state a prima facie case of FEHA retaliation, a plaintiff must show that (1) he engaged in "protected activity" by complaining to the employer of discrimination or participating in activities opposing the employer's practices reasonably believed to be unlawful under §12940, (2) the decision maker took an adverse employment action against plaintiff, and (3) the action would not have been taken but for the complaint. *Mokler v. County of Orange* (2007) 157 Cal.App.4th 121, 138.

As explained above, defendant does not meet its burden of showing that placing plaintiff on leave was not an "adverse employment action." However, defendant does meet its initial burden by providing evidence supporting a non-retaliatory legitimate reason for the adverse employment action and, thus, that plaintiff cannot prove that he would not have been placed on administrative leave but for the complaint. As explained above, defendant has sufficiently established that plaintiff was put on leave because of accusations from a fellow officer that plaintiff had threatened him into silence during an investigation into plaintiff's alleged misconduct with a robbery suspect. Plaintiff fails to provide any evidence that he would not have been placed on administrative leave if it weren't for his complaints about discrimination. Because plaintiff fails to show the existence of a triable issue

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

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HONORABLE
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JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

G.S. HIRONAKA, C/A

Deputy Sheriff

NONE

Reporter

9:06 am

BC414602

Plaintiff
Counsel

OMAR RODRIGUEZ ET AL

NO APPEARANCES

VS

Defendant

BURBANK POLICE DEPARTMENT ET AL

Counsel

170.6 DAVID P. YAFFE

R/F 7-27-09 Denied as to BC4179

NATURE OF PROCEEDINGS:

concerning his retaliation cause of action, summary adjudication of that cause of action is proper.

Issue No. 4 -- Fifth cause of action for Failure to Take Reasonable Steps to Prevent Harassment, Discrimination, and Retaliation in Violation of FEHA. Actionable harassment or discrimination is a necessary prerequisite to a failure to prevent claim. Trujillo v. North County Transit District (1998) 63 Cal.App.4th 280. Defendant has met its initial burden by showing that plaintiff cannot support his claims for harassment, retaliation, or discrimination with evidence, as explained above. Also as explained above, plaintiff has not met the resulting burden to proffer evidence showing a triable issue of material fact concerning these claims. Because plaintiff fails to show the existence of a triable issue as to the fifth cause of action, summary adjudication of that cause of action is proper.

Issue No. 5 -- Sixth Cause of Action for Violation of the Public Safety Officers Procedural Bill of Rights ("POBRA"). Prior to filing a suit for money damages against a government entity, a plaintiff must file a claim with the entity pursuant to the Government Claims Act. Gov't Code § 900 et seq. Defendant meets its initial burden by showing that plaintiff never filed a government claim that mentioned the POBRA claim that plaintiff now wishes

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

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JUDGE

E.T. ESPINOZA

DEPUTY CLERK

HONORABLE
#

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

G.S. HIRONAKA, C/A

Deputy Sheriff

NONE

Reporter

9:06 am

BC414602

Plaintiff
Counsel

OMAR RODRIGUEZ ET AL

NO APPEARANCES

VS

Defendant

BURBANK POLICE DEPARTMENT ET AL

Counsel

170.6 DAVID P. YAFFE

R/F 7-27-09 Denied as to BC4179

NATURE OF PROCEEDINGS:

to assert. On May 27, 2009, plaintiff filed a government claim act claim. (UMF # 77.) This claim makes no mention of the POBRA claims that plaintiff now asserts. Plaintiff's argument that it has evidence supporting violations of POBRA, including evidence that Chief Stehr discussed discipline of an officer with other officers, that defendant searched and confiscated plaintiff's property without a warrant, and that defendant ordered plaintiff to refrain from communicating with fellow officers during his administrative leave, and that defendant interrogated plaintiff without the proper safeguards (PDF # 150, 190) does not create a triable issue because it does not address defendant's claim that plaintiff failed to file a claim for the POBRA violations. In any event, Plaintiff's government claims act claim makes no mention of any of the violations of which plaintiff now asserts he has evidence. (UMF # 77; FAC, Ex. B.) Nothing in plaintiff's government claim put the department on notice of any illegal search and seizure, unlawful interrogation, or breach of officer privacy claim, the claims which plaintiff now wishes to assert through POBRA. Because plaintiff fails to create a triable issue as to his POBRA claim, defendant is entitled to summary adjudication of that issue.

Issue No. 6 -- Seventh Cause of Action for Injunctive Relief. Defendant has met its burden by showing that plaintiff cannot support any of the

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 05/18/11

DEPT. 37

HONORABLE JOANNE O'DONNELL

JUDGE

E.T. ESPINOZA

DEPUTY CLERK

HONORABLE
#

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

G.S. HIRONAKA, C/A

Deputy Sheriff

NONE

Reporter

9:06 am

BC414602

Plaintiff
Counsel

OMAR RODRIGUEZ ET AL

NO APPEARANCES

VS

Defendant

BURBANK POLICE DEPARTMENT ET AL

Counsel

170.6 DAVID P. YAFFE

R/F 7-27-09 Denied as to BC4179

NATURE OF PROCEEDINGS:

claims on which the request for injunction is premised. Plaintiff's opposition fails to address this claim. Accordingly, summary adjudication of this issue is appropriate.

Because summary adjudication of all the issues is proper and effectively disposes of all of the claims against defendant, summary judgment of Rodriguez's claims against defendant is warranted.

CLERK'S CERTIFICATE OF MAILING/ NOTICE OF ENTRY OF ORDER

I, the below named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that this date I served Notice of Entry of the above minute order of May 18, 2011 upon each party or counsel named below by depositing in the United States mail at the courthouse in Los Angeles, California, one copy of the original entered herein in a separate sealed envelope for each, addressed as shown below with the postage thereon fully prepaid.

Date: May 18, 2011

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 05/18/11

DEPT. 37

HONORABLE JOANNE O'DONNELL

JUDGE

E.T. ESPINOZA

DEPUTY CLERK

HONORABLE
#

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

G.S. HIRONAKA, C/A

Deputy Sheriff

NONE

Reporter

9:06 am

BC414602

Plaintiff

Counsel

OMAR RODRIGUEZ ET AL

NO APPEARANCES

VS

Defendant

BURBANK POLICE DEPARTMENT ET AL

Counsel

170.6 DAVID P. YAFFE

R/F 7-27-09 Denied as to BC4179

NATURE OF PROCEEDINGS:

John A. Clarke, Executive Officer/Clerk

By: E.T. Espinoza

E T Espinoza

Solomon Gresen

Law Offices of Rheuban & Gresen

15910 Ventura Blvd., Suite 1610

Encino, CA 91436

Lawrence Michaels/Veronica Von Grabow

Mitchell, Silberberg & Knupp, LLP

11377 W. Olympic Blvd.

Los Angeles, CA 90064-1683

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PROOF OF SERVICE

42729-00001

Rodriguez, et al. vs. Burbank Police Department, et al. — LASC Case No. BC414602

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Mitchell Silberberg & Knupp LLP, 11377 West Olympic Boulevard, Los Angeles, California 90064-1683.

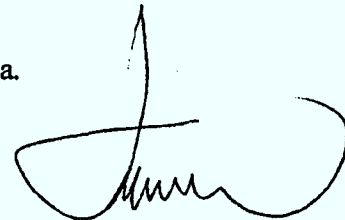
On May 25, 2011, I served a copy of the foregoing document(s) described as:
[PROPOSED] ORDER ON DEFENDANT CITY OF BURBANK'S MOTION FOR SUMMARY JUDGMENT AGAINST PLAINTIFF OMAR RODRIGUEZ on the interested parties in this action at their last known address as set forth below by taking the action described below:

Solomon E. Gresen, Esq., seg@rglawyers.com
Steven V. Rheuban, Esq., svr@rglawyers.com
Law Offices of Rheuban & Gresen
15910 Ventura Boulevard, Suite 1610
Encino, CA 91436
T: (818) 815-2727
F: (818) 815-2737
Attorneys for Plaintiffs Omar Rodriguez, Cindy Guillen-Gomez, Steve Karagiosian, Elfego Rodriguez, and Jamal Childs

☒ **BY PERSONAL DELIVERY:** I placed the above-mentioned document(s) in sealed envelope(s), and caused personal delivery by **FIRST LEGAL SUPPORT SERVICES** of the document(s) listed above to the person(s) at the address(es) set forth above.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on May 25, 2011, at Los Angeles, California.



Isabel G. Moreno

1
2
3
4 **PROOF OF SERVICE**

42729-00001

5 *Rodriguez, et al. vs. Burbank Police Department, et al. — LASC Case No. BC414602*

6 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

7 I am employed in the county of Los Angeles, State of California.

8 I am over the age of 18, and not a party to the within action; my business address is **FIRST**
9 **LEGAL SUPPORT SERVICES**, 1511 West Beverly Boulevard, Los Angeles, CA 90026.

10 On May 25, 2011, I served a copy of the foregoing document(s) described as:
11 **[PROPOSED] ORDER ON DEFENDANT CITY OF BURBANK'S MOTION FOR SUMMARY**
12 **JUDGMENT AGAINST PLAINTIFF OMAR RODRIGUEZ** which was enclosed in sealed
13 envelopes addressed as follows, and taking the action described below:

14 Solomon E. Gresen, Esq., seg@rglawyers.com
15 Steven V. Rheuban, Esq., svr@rglawyers.com
16 Law Offices of Rheuban & Gresen
17 15910 Ventura Boulevard, Suite 1610
18 Encino, CA 91436
19 T: (818) 815-2727
20 F: (818) 815-2737
21 Attorneys for Plaintiffs Omar Rodriguez, Cindy Guillen-Gomez, Steve
22 Karagiosian, Elfego Rodriguez, and Jamal Childs

23 ☒ **BY PERSONAL SERVICE:** I hand delivered such envelope(s):

24 ☐ to the addressee(s);

25 ☐ to the receptionist/clerk/secretary in the office(s) of the addressee(s).

26 ☐ by leaving the envelope in a conspicuous place at the office of the addressee(s)
27 between the hours of 9:00 a.m. and 5:00 p.m.

28 I declare under penalty of perjury under the laws of the State of California that the above is
true and correct.

Executed on May 25, 2011, at Los Angeles, California.

Printed Name

Signature

PROOF OF SERVICE

42729-00001

Elfego vs. City of Burbank – Court of Appeal No. B227414
Appeal from *Rodriguez, et al. vs. Burbank Police Department, et al.* — LASC Case No. BC414602

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Mitchell Silberberg & Knupp LLP, 11377 West Olympic Boulevard, Los Angeles, California 90064-1683.

On September 2, 2011, I served a copy of the foregoing document(s) described as:

1. RESPONDENT'S BRIEF

2. RESPONDENT'S APPENDIX IN LIEU OF CLERK'S TRANSCRIPT

on the interested parties in this action at their last known address as set forth below by taking the action described below:

Los Angeles Superior Court, Department 37 The Honorable Joanne O'Donnell 111 North Hill St. Los Angeles, CA 90012 Tel: (213) 974-5649

Solomon E. Gresen, Esq., seg@rglawyers.com Steven V. Rheuban, Esq., svr@rglawyers.com Law Offices of Rheuban & Gresen 15910 Ventura Boulevard, Suite 1610 Encino, CA 91436 T: (818) 815-2727 F: (818) 815-2737
--

<i>Attorneys for Plaintiffs Omar Rodriguez, Cindy Guillen-Gomez, Steve Karagiosian, Elfego Rodriguez, and Jamal Childs</i>
--

Kenneth C. Yuwiler, kyuwiler@shslaborlaw.com
Silver Hadden Silver Wexler & Levine
1428 Second Street
Santa Monica, CA 90401
T: (310) 393-1486
F: (310) 395-5801
Attorneys for Plaintiff and Cross-Defendant Omar Rodriguez

☒ **BY PERSONAL DELIVERY:** I placed the above-mentioned document(s) in sealed envelope(s), and caused personal delivery by of the document(s) listed above to the person(s) at the address(es) set forth above.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 2, 2011 at Los Angeles, California.


Michele Glikman

CLERK'S OFFICE
COURT OF APPEAL SECOND DIST.
SEP 7 2011

2011 SEP -7 PM 3:46

JOSEPH LANE CLERK

Case No. B227414

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION 4

OMAR RODRIGUEZ, STEVE KARAGIOSIAN
AND CINDY GUILLEN-GOMEZ,
Plaintiffs and Appellants,

v.

BURBANK POLICE DEPARTMENT ET AL.,
Defendants and Respondents.

Appeal from Superior Court of Los Angeles County, Department 37
The Honorable Joanne O'Donnell, Telephone: (213) 974-5649
LASC Case No. BC 414602

AMENDED PROOF OF SERVICE FOR SUPERIOR COURT

MITCHELL SILBERBERG & KNUPP LLP
Lawrence A. Michaels (State Bar No. 107260), lam@msk.com
Veronica T. von Grabow (State Bar No. 259859), vtv@msk.com
11377 West Olympic Boulevard
Los Angeles, California 90064-1683
Telephone: (310) 312-2000
Facsimile: (310) 312-3100

BALLARD, ROSENBERG, GOLPER & SAVITT LLP
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(erroneously sued as an independent entity named
“BURBANK POLICE DEPARTMENT”)

PROOF OF SERVICE

42729-00001

Elfego vs. City of Burbank – Court of Appeal No. B227414
Appeal from *Rodriguez, et al. vs. Burbank Police Department, et al.* — LASC Case No. BC414602

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Mitchell Silberberg & Knupp LLP, 11377 West Olympic Boulevard, Los Angeles, California 90064-1683.

On September 2, 2011, I served a copy of the foregoing document(s) described as:

1. RESPONDENT'S BRIEF

2. RESPONDENT'S APPENDIX IN LIEU OF COURT'S TRANSCRIPT

on the interested parties in this action at their last known address as set forth below by taking the action described below:

Clerk of the Court Los Angeles County Superior Court /Central District 111 North Hill St. Los Angeles, CA 90012
--

- ☒ **BY OVERNIGHT MAIL:** I placed the above-mentioned document(s) in sealed envelope(s) designated by the carrier, with delivery fees provided for, and addressed as set forth above, and deposited the above-described document(s) with FedEx in the ordinary course of business, by depositing the document(s) in a facility regularly maintained by the carrier or delivering the document(s) to an authorized driver for the carrier.

I declare under penalty of perjury under the laws of the State of California that the
above is true and correct. Executed on September 2, 2011, at Los Angeles, California.


Michele Glikman

Case No. B227414

2011 SEP -7 PM 3:46

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION 4

OMAR RODRIGUEZ, STEVE KARAGIOSIAN
AND CINDY GUILLEN-GOMEZ,
Plaintiffs and Appellants,

v.

BURBANK POLICE DEPARTMENT ET AL.,
Defendants and Respondents.

Appeal from Superior Court of Los Angeles County, Department 37
The Honorable Joanne O'Donnell, Telephone: (213) 974-5649
LASC Case No. BC 414602

PROOFS OF SERVICE BY MESSENGER

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POLICE DEPARTMENT OF THE CITY OF BURBANK
(erroneously sued as an independent entity named
“BURBANK POLICE DEPARTMENT”)

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of Los Angeles, State of California.

I am over the age of 18, and not a party to the within action; my business address is , ,
1517 W. Beverly Bl. , Los Angeles CA 90026

On September 2, 2011, I served the foregoing document(s) described as

1. RESPONDENT'S BRIEF

2. RESPONDENT'S APPENDIX IN LIEU OF CLERK'S TRANSCRIPT

which was enclosed in sealed envelopes addressed as follows, and taking the action described below:

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*Attorneys for Plaintiffs Omar Rodriguez,
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Elfego Rodriguez, and Jamal Childs*

☒ **BY PERSONAL SERVICE:** I hand delivered such envelope(s):

☐ to the addressee(s);

☒ to the receptionist/clerk/secretary in the office(s) of the addressee(s).

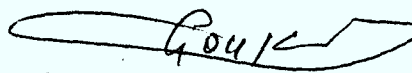
☐ by leaving the envelope in a conspicuous place at the office of the addressee(s)
between the hours of 9:00 a.m. and 5:00 p.m.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 2, 2011, at Los Angeles, California.

ANDY GOUGHKASIAN

Printed Name



Signature

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of Los Angeles, State of California.

I am over the age of 18, and not a party to the within action; my business address is , .
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which was enclosed in sealed envelopes addressed as follows, and taking the action described below:

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☒ **BY PERSONAL SERVICE:** I hand delivered such envelope(s):

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☒ to the receptionist/clerk/secretary in the office(s) of the addressee(s).

☐ by leaving the envelope in a conspicuous place at the office of the addressee(s)
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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 2, 2011, at Los Angeles, California.

ARNEL BARTOLOME

Printed Name


Signature